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No. 07-10441

IN THE
Supreme Court of the United States

JOHNNIE CORLEY,
Petitioner,

v.

UNITED STATES,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AND THE NATIONAL ASSOCIATION OF FEDERAL DEFENDERS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether 18 U.S.C. § 3501(c), when read together with Federal Rule of Criminal Procedure 5(a), *McNabb* v. *United States*, 318 U.S. 332 (1943), and *Mallory* v. *United States*, 354 U.S. 449 (1957), requires that a confession taken more than six hours after arrest and before presentment be inadmissible if there was unreasonable or unnecessary delay in presenting the defendant to the magistrate judge.

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INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae, the National Association of Criminal Defense Lawyers ("NACDL") is a nonprofit corporation with membership of more than 10,000 attorneys and 28,000 affiliate members in all fifty states. The American Bar Association recognizes the NACDL as an affiliate organization and awards it full representation in its House of Delegates.

Amicus curiae, the National Association of Federal Defenders ("NAFD"), was formed in 1995 to enhance the representation provided under the Criminal Justice Act, 18 U.S.C. § 3006A, and the Sixth Amendment to the United States Constitution. The Association is a nationwide, nonprofit, volunteer organization whose membership includes attorneys who work for federal public and community defender organizations authorized under the Criminal Justice Act.

Together, *amici curiae* represent a broad spectrum of public and private defenders who practice in our nation's criminal courts each day. They offer extensive and intimate experience with questions pertaining to the admissibility of confessions and custodial interrogation practices.

Amici appear in support of Petitioner in this case because the Third Circuit's opinion represents a significant and unwarranted departure from decades-long criminal procedure in this area. The bright-line rule offered by Petitioner is neither unique nor

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[1] Pursuant to Rule 37.6, counsel for *amici* states that no counsel for a party authored this brief in whole or in part and no person, other than *amici,* its members, or its counsel made a monetary contribution to the preparation of this brief.

unsupported. To the contrary, it has been the established and workable rule for decades. Reversal is warranted.

SUMMARY OF ARGUMENT

Read correctly, 18 U.S.C. § 3501(c) preserves the *McNabb-Mallory* rule, which works in conjunction with *Miranda* v. *Arizona*, 384 U.S. 436 (1966), to protect a suspect's privilege against self-incrimination and right to counsel. The warnings required by *Miranda* are intended to counteract the coercive pressures that can be exerted by police interrogation following an arrest; the *McNabb-Mallory* rule ensures that protection by countering the coercive pressure of detainment itself. Studies and scholarship since *Miranda* indicate that defendants are significantly more likely to waive their rights and to offer a confession (often a false confession) after a prolonged period of pre-presentation detention. The *McNabb-Mallory* rule prohibits law enforcement from exploiting this power by limiting any delay in presentation to a magistrate to that which is "necessary." In enacting § 3501(c), Congress recognized the need for such protection but determined that a statement obtained by a suspect could potentially be admitted *if* it is given within six-hours. Both constitutional concerns and the rationale of *McNabb-Mallory* call into question the validity of § 3501(c). While that question is not presented here, those considerations strongly militate against the Third Circuit's attempt to abrogate operation of the *McNabb-Mallory* rule outside the six-hour period.

Petitioner's construction of the plain language of § 3501 provides a bright-line rule that is easily understood and applied by law enforcement, courts, and counsel. If less than six hours elapses between

arrest and confession, the delay in presentment is insufficient alone to render any statement inadmissible and the court conducts to a voluntariness analysis. If more than six hours elapses, the resulting confession is inadmissible under *McNabb-Mallory*, unless specific, congressionally-sanctioned exceptions are met. The bright-line, plain language rule advanced by petitioner comports with the statute and avoids the uncertain and difficult assessments necessary for an *ad hoc* voluntariness analysis. Like other, prophylactic bright-line rules that the Court has sanctioned, Petitioner's construction thus creates important efficiencies and greater assurance against injustice. The Third Circuit's reversion to a totality-of-the-circumstances voluntariness test contravenes obvious congressional intent, frustrates the objectives of law enforcement, and jeopardizes the rights of defendants.

ARGUMENT

I. *MIRANDA* AND *MCNABB-MALLORY* COMBINE TO PROVIDE ESSENTIAL CONSTITUTIONAL PROTECTIONS.

The constitutionally grounded warnings prescribed by *Miranda* are but one important bulwark against the inherently coercive nature of custodial interrogations. *Miranda*'s warnings are vital to a suspect's informed choice as to whether to waive his or her constitutional rights. See 384 U.S. at 457-58. But those warnings do not act as complete protection against intense questioning by law enforcement—a reality that the Court recognized long before *Miranda* and which, as Petitioner amply demonstrates, was acknowledged by Congress in crafting the

compromise that led to the enactment of § 3501(c) in its present form. Pet. Br. 40-52.

Miranda addressed at length the "compulsion" inherent in sophisticated interrogations undertaken in "an unfamiliar atmosphere" where the suspect is "incommunicado" and where the sole purpose of interrogators is to "subjugate the individual to the will of his examiner." 384 U.S. at 457. The Court also expressly recognized that extended examinations increase the compulsive forces:

> The circumstances surrounding in-custody interrogation can operate very quickly to overbear the will of one merely made aware of his privilege by his interrogators. . . . Our aim is to assure that the individual's right to choose between silence and speech remains unfettered throughout the interrogation process. A once-stated warning . . . cannot itself suffice to that end among those who most require knowledge of their rights.

384 U.S. at 469. Precisely because a suspect's ability to make an unfettered choice can be undermined in prolonged interrogation, *Miranda* and *McNabb-Mallory* combine to ensure that any coercive effect is ameliorated. *Miranda* protects against "active" police coercion (explicit pressure to waive constitutional rights), and *McNabb-Mallory* protects against "passive" police coercion (extended and unnecessary detention).

McNabb-Mallory's protections also hasten the provision of counsel for the accused. This Court has determined that the right to counsel under the Sixth Amendment attaches upon indictment, or—when, as here, a suspect is taken into custody prior to indictment—at the commencement of judicial

proceedings, which in federal cases is the filing of the Rule 3 complaint with the Magistrate at the initial appearance under Rule 5(c). Thus, unnecessary delay in violation of Rule 5(a) has a direct effect on the arrested person's ability to exercise his or her right to counsel. In the minds of would-be interrogators, this fact is closely tied to the motivation for delay. Counsel in most cases will advise the arrestee not to speak with police before the case can be evaluated or, at a minimum, will negotiate to ensure that any information provided will in fact result in whatever lenient treatment prosecutors are willing to provide. As *Miranda* frequently emphasized, counsel also play a vital role in "mitigating the dangers of untrustworthiness" heightened by fear and anxiety and ensuring that whatever information is exchanged is accurate. *Miranda*, 384 U. S. at 470.

1. Scientific studies and scholarship conducted post-*Miranda* have both validated the Court's concerns regarding "compulsion" during custodial interrogation and have highlighted the need for limitations such as those the Court sanctioned in *McNabb-Mallory*. Detained suspects show very high levels of anxiety, with those levels peaking during the time after arrest and before presentment. Gisli H. Gudjonsson, *The Psychology of Interrogations and Confessions* 35, 126 (2003). These levels of anxiety are caused by at least three separate stressors introduced at the time of detention: (1) the physical environment at the police station, (2) confinement and isolation from peers, and (3) submission to authority. Barrie Irving & Linden Hilgendorf, *Police Interrogation: The Psychological Approach, Research Studies No. 1*, 28 (1980).

A post-arrest, pre-presentment suspect is confronted with an intense, police-dominated

environment, without any modulating or mollifying influence such as peers or an impartial magistrate. The pre-presentment period involves absolute submission to police authority. A suspect may act only with the approval of police authority. He may not eat, sleep or even go to the bathroom unless the officers permit. Most importantly, the suspect has no control over when or where he is transported. The officers control the detention and determine when the pre-presentment period will end.

In addition to all these restrictions, the suspect is immersed in an environment that assumes guilt. Before presentment to a judge, the suspect has no interaction with a neutral party. Nor is the suspect notified of his or her legal rights *vis a vis* the criminal charges. Therefore, prior to presentment, the suspect is overwhelmed by assumptions of guilt without the counterbalancing affirmation from a neutral party regarding the suspect's rights—affirmation that might empower a suspect to continue to protest his or her innocence—or to avoid statements that, which not confessions, are nonetheless indirectly incriminating and liable to embroil the suspect further. The coercive pressure in these circumstances is intense, and only increases as the period of confinement lengthens.

2. The *Miranda* Court forthrightly acknowledged that "[c]ustodial interrogation . . . does not necessarily afford the innocent an opportunity to clear themselves." 384 U.S. at 482. Recent scientific research firmly establishes that innocent suspects are significantly more likely to waive *Miranda* rights than are guilty suspects. Saul M. Kassin, *On the Psychology of Confessions: Does Innocence Put Innocents at Risk?*, 60 Am. Psychol. 215, 217-18 (2005); Richard A. Leo & Welsh S. White, *Adapting to*

Miranda: Modern Interrogators' Strategies for Dealing with the Obstacles Posed by Miranda, 84 Minn. L. Rev. 397, 397-472 (1999); Saul M. Kassin & Rebecca J. Norwick, *Why People Waive Their Miranda Rights: The Power of Innocence*, 28 Law & Hum. Behav. 215, 218 (2004).

It is not the case, as might be assumed, that no harm is caused when an innocent person waives his or her *Miranda* rights. Important data support the oft-stated maxim that innocent people can be pressured into confessing to crimes they did not commit and are convicted on the basis of their false confessions. Of the 225 cases of DNA-exonerated wrongful convictions established by the Innocence Project, fully 25% involved false confessions. See Innocence Project, http://www.innocenceproject.org/fix/False-Confessions.php (last visited Nov. 21, 2008). These confessions result from sophisticated police interrogation methods that are designed to exploit a suspect's psychological vulnerabilities. The centerpiece of these methods is that the environment itself—the very fact of detention, and the resulting stress—impels the person to confess.

Coercive police interrogation methods applied to vulnerable suspects thus poses a significant risk of false confessions and wrongful conviction. Another common technique routinely employed during detention is to interrogate suspects with little or no evidence linking the suspect to the crime. Peter Kageleiry, Jr., *Psychological Police Interrogation Methods: Pseudoscience in the Interrogation Room Obscures Justice in the Courtroom*, 193 Mil. L. Rev. 1, 29 (2007). The best known authority of psychological interrogation methods, the so-called "Reid

Technique,"[2] Fred E. Inbau et al., *Criminal Interrogation and Confessions* (4th ed. 2004), recommends that interrogators faced with sparse or nonexistent evidence "portray increased confidence in the suspect's guilt" and "confront the suspect with the existence of fictitious evidence during the interrogation." Brian C. Jayne & Joseph T. Buckley, *The Investigator Anthology* 227-30 (1999); see also Gudjonnson, *supra,* at 7 (noting that the manual is "undoubtedly the most influential practical manual" in the United States and that "hundreds and thousands of investigators have received training in their technique"); *Miranda*, 384 U.S. at 499-501 (citing manual for representation of common police

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[2] The Reid Technique uses considerable psychological manipulation and pressure to break down resistance. Gudjonsson, *supra*, at 10. It is based on two main processes: (1) breaking down denials and resistance and (2) increasing the suspect's desire to confess. *Id.* at 11. Interrogators initiate the interrogation by asserting the suspect's guilt. Inbau, *supra*, at 213. They then present the suspect with evidence, real or fabricated, that links them to the crime. Jayne, *supra,* at 227–30. When suspects deny their guilt, Step 3 of the Reid Technique requires interrogators to interrupt them. Inbau, *supra*, at 213. Likewise, when suspects attempt to explain why they are innocent, Step 4 instructs interrogators to cut them short. Inbau, *supra,* at 213-214. Step 5 imposes pressure on the suspect by impacting their perception of physical control over his or her environment. Inbau, *supra*, at 214. This step instructs interrogators to maintain eye contact with the suspect, repeatedly using the suspect's first name, lean close to the subject, and lightly touch the suspect. Gudjonsson, *supra*, at 18. Step 6 endeavors to siphon the suspect's thoughts to admission of guilt by making the suspect focus on a central event of the crime. Inbau, *supra,* at 346. Step 7 involves a final assertion of control over the suspect's thought process by offering the suspect the choice of two equally incriminating versions of what happened, channeling the suspect into one false confession or another. Inbau, *supra*, at 353.

interrogation stratagems). Thus, a person for whom there is no incriminating evidence is likely to receive the most aggressive interrogation and, as a result, is more likely to offer a false confession.

Delay in presentment allows for the more extended, and thus more coercive, use of these techniques. As a result of the suspect's peaked anxiety level before presentment, it is during this time that risk of false confession is greatest. A suspect with increased anxiety levels is more susceptible to suggestion — influence resulting from the suggestion that the suspect is guilty. Gudjonnson, *supra*, at 385. Suspects who suffer from anxiety due to the isolation inherent in custody are likely to falsely confess simply to end the stressful interrogation. *Id.* at 481.

The relationship between anxiety and the tendency to confess has been repeatedly acknowledged and relied upon by this Court since *Miranda*. *E.g.*, *Michigan* v. *Mosely*, 423 U.S. 96, 112 (1975) (Brennan, J., concurring) ("*Miranda* guidelines were necessitated by the inherently coercive nature of in-custody questioning"); *Arizona* v. *Roberson*, 486 U.S. 675, 686 (1988) (recognizing that "there is a serious risk that the mere repetition of the *Miranda* warnings would not overcome the presumption of coercion that is created by prolonged police custody"); *Illinois* v. *Perkins*, 496 U.S. 292, 297 (1990) ("It is *Miranda*'s premise that the danger of coercion results from the interaction of custody and official interrogation"); *Dickerson* v. *United States*, 530 U.S. 428, 435 (2000) ("[C]ustodial police interrogation, by its very nature, isolates and pressures the individual."). In particular, *Roberson*'s warnings about the potential ineffectiveness of *repeated* Miranda warnings during prolonged custody ring loudly in the context of this case.

3. Congress also acknowledged the coercive effect of custody, if reluctantly so, and the need for restrictions on use of confessions obtained during unreasonably long detentions when it enacted § 3501(c). As Petitioner explains, the language of that statute was an act of compromise between those legislators who would have attempted a legislative abrogation of *McNabb-Mallory* and those unwilling to sanction prolonged interrogations. Pet. Br. 40-52.

The six-hour time limitation established by § 3501(c) thus represents a rather arbitrary assessment of a presumptively "reasonable" time for a pre-presentment detention. See Pet. Br. 43 (the "D.C. Crime Act" enacted just five months before by the same Congress provided only a three-hour safe harbor). *McNabb* expressly left open the question of whether prolonged and unreasonable detention raises constitutional concerns regarding the integrity of the privilege against self-incrimination. *McNabb* v. *United States,* 318 U.S. 332, 340 (1943) (declining to reach "the Constitutional issue pressed [by both parties] upon us" and instead finding a violation of statutory requirements for presentment). To the extent that, like *Miranda*, the *McNabb-Mallory* rule is prophylactic in nature, but nonetheless firmly rooted in vital constitutional protections, a an arbitrary legislative time limitation must yield to the over-arching constitutional command.

To be sure, the continuing validity of § 3501(c) is not the question presented in this case, but the reasoning of *Dickerson* in abrogating the effect of subsections (a) and (b) of § 3501 applies equally here: "Congress may not legislatively supersede our decisions interpreting and applying the Constitution." *Dickerson*, 530 U.S. at 437. Given the strength of that reasoning, Petitioner's effort to reaffirm the

existing rule represents the minimum step necessary to ensure the proper constitutional balance between an individual's rights and administration of the police process. It is a step that provides at least some measure of sensible protection against the scientifically-based and long-held concerns of this Court and Congress about the risk of prolonged delays in pre-presentment detention.

4. Even absent an express constitutional command with regard to the protection of the privilege against self-incrimination in the context of prolonged detention, the Court's interpretations of Fed. R. Crim. Procedure 5(a) militate against any reading of § 3501(c) that permit application of a "totality" test beyond an initial six-hours. Rule 5(a) requires any person making an arrest for a federal offense—with or without a warrant, before or after indictment—to bring the arrested person, with few and inapplicable exceptions, before a United States Magistrate Judge "without unnecessary delay." Fed. R. Crim. P. 5(a). The Magistrate is then to conduct an "initial appearance," Fed. R. Crim. P. 5(c), at which time the arrested person is advised of and afforded a number of basic procedural rights. In *Mallory*, the Court authoritatively construed the mandate of Rule 5(a) as disallowing *any* delay in presentment *for the purpose of interrogation* of the arrested person. All such delay was declared "unnecessary." *Mallory* v. *United States,* 354 U.S. 449, 452 (1957). Exercising its supervisory power to fashion appropriate remedies for violations of the rules where none were otherwise specified, *McNabb* prohibited the admission of incriminating statements obtained from suspects as a result of exploitation of such unlawful delay.

Congress or the Rules Committee could, to the extent that the *McNabb-Mallory* rule is not constitutionally essential, have revised or replaced Rule 5(a) to supplant the Court's remedial decision. But it did not. Instead, in 18 U.S.C. § 3501(c), Congress left Rule 5(a) in place and altered the scope of the district court's authority to admit a suspect's statements despite violations of that Rule. Nothing in § 3501(c) authorizes a six-hour window for post-arrest interrogation to see whether a confession can be obtained. Rather, in 3501(c) Congress provided that *when and if* federal officers violate Rule 5(a), as construed by this Court, and a statement is obtained during that period of unnecessary delay which is not involuntary in the constitutional sense, then a suspect's statements may be admitted if the delay was for a period of no more than six hours.

Amici do not suggest that all post-arrest interrogation is necessarily unlawful.[3] Here, for example, a joint state-federal "fugitive squad" sought to execute a local warrant for Petitioner, but in the course of attempting to elude capture, Petitioner committed a minor assault on one of the federal agents. He was chased down and arrested—necessarily without a warrant—for that assault. It was then mid-morning on a weekday, and it was the FBI's duty under Rule 5(a) to bring him without

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[3] However, just as an arrest for interrogation alone is impermissible under the Fourth Amendment, *see Hayes* v. *Florida*, 470 U.S. 811, 813-17 (1985) (detention for investigative purposes, without probable cause to support an arrest on criminal charges, is unconstitutional under the Fourth Amendment); *Dunaway* v. *New York*, 442 U.S. 200, 208-16 (1979) (same), an arrest that extends beyond the need for legal process and results in continued seizure for the purpose of interrogation alone may also violate the Fourth Amendment.

"unnecessary" delay before a Magistrate. The federal courthouse (and the nearby hospital) in Philadelphia was less than 30 minutes away from the suburban town where Petitioner was arrested. Because Rules 3 and 5(c) require that a complaint be prepared before the initial appearance, some delay—sufficient for the agents to inform an Assistant United States Attorney on duty of what had occurred and to have a complaint approved and prepared—would be reasonable. Other reasonable delays are often attributable to the need to verify a suspect's identity through fingerprinting or to check for warrants from other jurisdictions.

Such procedures might well take a couple of hours. During that time, non-coercive questioning consistent with *Miranda* and other applicable rules could occur. But, under Rule 5(a), the delay cannot be extended for that purpose. Any additional delay prompted by an interest in speaking with neighbors or deciding who should do the interrogation (*i.e.*, whether state or federal agents) or the interrogation itself was "unnecessary" and therefore unlawful. Here that delay extended for more than six hours – *excepting* those hours needed for Petitioner's medical treatment. *McNabb-Mallory* flatly prohibits admission of Petitioner's statements in such a context and § 3501(c) says nothing that qualifies, militates or abrogates that rule when the delay has extended beyond the six-hour period with which the statute is concerned.

II. *MCNABB-MALLORY* SERVES AS A BRIGHT-LINE RULE FOR LAW ENFORCEMENT AND COURTS.

Section 3501(c)'s bright-line rule also gives necessary, concrete guidance to law enforcement, courts, and counsel regarding the length of permissible delay between arrest and presentation to

a magistrate. It creates a clear standard favoring pre-presentment detentions of six hours or less: if a confession is given before six hours elapse, it is likely admissible; if the confession is given thereafter, it is likely inadmissible. See *United States* v. *Perez*, 733 F.2d 1026, 1035 (1984) (interpreting § 3501 to remove delays of less than six hours from the scope of *McNabb-Mallory*). Reading § 3501(c) as it is written allows law enforcement officials and judges to resolve questions concerning detention consistently and expeditiously, without resorting to an uncertain *ad hoc* voluntariness analysis.

1. Giving effect to § 3501(c) mitigates the complex and uncertain task of determining voluntariness. The statutory test for determining voluntariness states that "the trial judge . . . shall take into consideration all the circumstances surrounding the giving of the confession," and then provides a list of five factors that "need not be conclusive." [4] 18 U.S.C. § 3501(b). In *Dickerson*, the Court observed that the totality-of-the-circumstances voluntariness test codified in § 3501 is difficult both "for law

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[4] Those factors are:

> (1) the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment, (2) whether such defendant knew the nature of the offense with which he was charged or of which he was suspected at the time of making the confession, (3) whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him, (4) whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel; and (5) whether or not such defendant was without the assistance of counsel when questioned and when giving such confession."

18 U.S.C. § 3501(b).

enforcement officers to conform to, and for courts to apply in a consistent manner." 530 U.S. at 444.

The United States itself acknowledged the difficulty and risks of inconsistency in applying the voluntariness test and vigorously argued that a voluntariness test alone was insufficient to protect a defendant's privilege against self-incrimination in the "inherently coercive" custodial context. Brief for the United States ("U.S. Br.") at 42-44, *Dickerson* v. *United States*, 530 U.S. 428 (2000) (No. 99-5525), 2000 WL 141075.[5] Yet this is the only test the Third Circuit has recognized in considering the admissibility of confessions obtained after a delay in presentment. J.A. 189.

Litigating voluntariness in every case where the defendant challenges the admissibility of a confession would create a burden on the courts, in addition to fostering uncertainty among law enforcement officials and defense lawyers as to which confessions are likely to be excluded. See *id.* at 229 (Sloviter, J., dissenting) (noting that this issue "is important not only to Corley but to all arresting officers operating in this circuit."). If delay is but one factor within the

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[5] The United States argued:

> If *Miranda* warnings are not required, the result will be uncertainty for the police and an additional volume of litigation focusing on the totality-of-the-circumstances voluntariness standard. . . . As demonstrated by the thirty pre-*Miranda* confession cases decided by this Court under the due process test, the totality-of-the-circumstances voluntariness test is more difficult and uncertain in application than *Miranda*. Its many variables would complicate the task of law enforcement in assessing what procedures would reliably secure admissible confessions.

U.S. Br. at 37-38, *Dickerson*, 530 U.S. 428 (No. 99-5525) (internal citations and parenthetical omitted).

voluntariness analysis, it further complicates an already complex determination: a delay over the statutory six hours would clearly weigh against voluntariness, but it would be unclear what other circumstances might compensate for such a delay. The result can only be confusion and inconsistency, and attempts by both sides to take advantage of that uncertainty.

2. In contrast, § 3501(c)'s six-hour rule "conserves judicial resources which would otherwise be expended in making difficult determinations of voluntariness." *Minnick* v. *Mississippi*, 498 U.S. 146, 151 (1990). In a closely analogous context, this Court has noted that this sort of presumption offers "clear and unequivocal" guidelines. *Edwards* v. *Arizona*, 451 U.S. 477 (1981) (invocation of right to counsel requires officers to cease questioning altogether, subject to certain exceptions such as defendant reinitiation); *Minnick*, 498 U.S. at 151 (confirming the bright-line rule established in *Edwards* and reiterating its value in "conserv[ing] judicial resources which would otherwise be expended in making difficult determinations of voluntariness").

Bright-line rules provide clear, consistent guidance for law enforcement, reducing the likelihood of constitutional rights violations. As then-Solicitor General Seth Waxman noted in oral argument for the United States in *Dickerson*, "one of the benefits that this Court has explained as recently as in *Minnick* and in *Moran* . . . for law enforcement and for the administration of justice generally[,] is the provision of rules that are easily applied and understood." Tr. of Oral Argument at 18, *Dickerson*, 530 U.S. 428 (No. 99-5525), 2000 WL 486733. This Court has noted that bright-line rules are valuable precisely because they "can be readily applied by the

police and the courts to a large variety of factual circumstances." U.S. Br. at 34 & n.24, *Dickerson*, 530 U.S. 428 (No. 99-5525) (citing *Roberson*, 486 U.S. at 681; *Colorado* v. *Spring*, 479 U.S. 564, 577 n.9 (1987); *Moran* v. *Burbine*, 475 U.S. 412, 425 (1986); *Berkemer* v. *McCarty*, 468 U.S. 420, 432 (1984); *Fare* v. *Michael C.*, 442 U.S. 707, 718 (1979); *New York* v. *Quarles*, 467 U.S. 649, 664 (1984) (O'Connor, J., concurring in judgment and dissenting in part)). By clearly demarcating the limits of permissible administration in the arrest context, bright-line rules like the six-hour time limitation in § 3501(c) create "'eas[y]'" and "'clear guid[es]'" for law enforcement in the complex arena of criminal procedure. U.S. Br. at 34 n.24, *Dickerson*, 530 U.S. 428 (No. 99-5525).

Other bright-line rules are effective and, like the *Miranda* rule, supported by both sides of the courtroom aisle. By hewing to such guidelines, individual rights are protected from intentional and unintentional violations and lawful convictions are upheld. See*, e.g.*, *United States* v. *Robinson*, 414 U.S. 218, 235 (1973) (creating a bright-line rule allowing for searches of individuals and the grabbing area incident to arrest); *Chambers* v. *Maroney*, 399 U.S. 42, 50-52 (1970) (creating a bright-line rule allowing searches of automobiles without a warrant as long as probable cause exists); *cf. Michigan* v. *Tucker*, 417 U.S. 433, 443 (1974) (noting that *Miranda* rules "help police officers conduct interrogations without facing a continued risk that valuable evidence would be lost").

The six-hour rule of § 3501(c) has the additional imprimatur of Congress. Congress debated that provision and determined, after considering several alternatives (including a wholesale abrogation of *McNabb-Mallory*), that confessions taken within six hours of arrest should be deemed presumptively

admissible while confessions taken outside that period must be justified by "reasonable" and "necessary" circumstances. The Third Circuit's holding that delay alone never renders a confession inadmissible, and that voluntariness is the sole standard for admissibility, eliminates the bright-line rule that Congress approved. See *Perez*, 733 F.2d at 1035 (finding that § 3501(c) expressed Congress's clear intention to limit application of the *McNabb-Mallory* rule only in situations of unreasonable pre-arraignment pre-confession delays of less than six hours or reasonable delays of more than six hours). Petitioner's interpretation of the statute, preserving the *McNabb-Mallory* rule for confessions offered after more than six hours of pre-presentment confinement, honors congressional intent and simplifies the task of the officers and magistrates who must make these determinations on a daily basis.

CONCLUSION

For the foregoing reasons, as well as those stated in Petitioner's Brief, the judgment below should be reversed.

Respectfully Submitted,

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